

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

PAUL BIRCHMAN and
KATHY BIRCHMAN

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

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CASE NUMBER: 1:19 CV 0128-HAB

OPINION AND ORDER

Before the Court is the Defendant's Motion to Dismiss Plaintiffs' Complaint for Failure to Prosecute (ECF No. 19) filed on November 20, 2020. In the motion and accompanying brief, the Defendant asserts that the Plaintiffs have failed to prosecute their case or cooperate during discovery.

On March 28, 2019, Plaintiffs brought this lawsuit pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, alleging medical malpractice by medical providers at the Veterans Affairs' medical centers. Since then, not much has transpired on the docket. Numerous extensions of the deadlines set out in the September 27, 2019, Report of Parties Planning Meeting have been granted. (ECF Nos. 12, 13, 18). Plaintiffs failed to respond to discovery forcing Defendant to file a motion to compel. (ECF No. 15). Plaintiffs did not respond to the motion to compel and on October 23, 2020, the Magistrate Judge granted the motion to compel and ordered the Plaintiffs, by November 6, 2020, to fully answer Defendant's interrogatories and fully respond to the requests for production of documents served on them on June 17, 2020. (ECF No. 16). Defendant represents in its current brief that this discovery still remains outstanding.

Unsurprisingly in light of this history, the Plaintiffs filed no response to the motion to dismiss. This, in addition to the failure to comply with court-ordered deadlines and participate in discovery, leads the Court to believe that the Plaintiffs have abandoned their claims and that the Defendant's Motion should be granted. Accordingly, the Court now DIRECTS the Plaintiffs to show cause why this case should not be dismissed for failure to prosecute and failure to comply with the discovery process. Plaintiffs shall respond no later than January 20, 2021. Failure to respond will result in the DISMISSAL of this cause pursuant to Fed.R.Civ.P. 37 and Fed.R.Civ.P. 41(b).

SO ORDERED on January 6, 2021.

s/ Holly A. Brady

JUDGE HOLLY A. BRADY

UNITED STATES DISTRICT COURT